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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/007,186	11/05/2001	Yasushi Kohno	TKA0032	5700

832 7590 11/26/2002

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111 E. WAYNE STREET  
SUITE 800  
FORT WAYNE, IN 46802

EXAMINER

VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 11/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/007,186

Applicant(s)

KOHNO, YASUSHI

Examiner

Andrea M. Valenti

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 September 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

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## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Romanian Patent RO 113935B to Badiu et al. in view of Journal of New Seeds, *Seed Soaking Damage in Some Grain Legumes*, Mike Smith, Nov. 2000.

Regarding Claim 1, Badiu et al teaches a method of preventing defective germination by leaving the plant seed to stand in highly watery condition at a low temperature in a dark place; and drying the plant seed immediately after leaving the plant seed to stand in the highly watery condition at the low temperature in a dark place, before the seed becomes active (Badiu et al English abstract). However, Smith teaches that drying seed after soaking results in increased germination capacity (Smith abstract last sentence). It would have been obvious to one of ordinary skill in the art to follow the method steps of Badiu et al to achieve the old and well-known result of improved germination as taught by Smith.

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Romanian Patent RO 113935B to Badiu et al as applied to claim 1 above, and further in

Art Unit: 3643

view of *Starting Plants from Seed*, Evans et al, NC State University, 1999, section on Light.

Regarding Claim 2 and 3, Badiu et al as modified is silent on the plant seed being dried in sufficient light to cause the seed to germinate or the plant seed is dried in a dark place. However, Evans et al teaches that light and darkness have an effect on germination depending on the plant species. Therefore, it would be obvious to one of ordinary skill in the art through a combination routine laboratory tests and experimentation and knowledge of the seed species, to determine light or dark requirements for a desired effect and to control germination.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,107,051 to Job et al in view of Journal of New Seeds, *Seed Soaking Damage in Some Grain Legumes*, Mike Smith, Nov. 2000.

Regarding Claim 1, Job et al teaches a method of preventing defective germination by leaving the plant seed to stand in highly watery condition at a low temperature in a dark place; and drying the plant seed (Job Col. 3 line 39-46) seed immediately after leaving the plant seed to stand in the highly watery condition at the low temperature in a dark place, before the seed becomes active. Job et al is silent on specifically identifying the benefits of the drying step. However, Smith teaches that drying seed after soaking results in increased germination capacity (Smith abstract last sentence). It would have been obvious to one of ordinary skill in the art to follow the

method steps of Job et al to achieve the old and well-known result of improved germination as taught by Smith.

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,107,051 as applied to claim 1 above, and further in view of *Starting Plants from Seed*, Evans et al, NC State University, 1999, section on Light.

Regarding Claim 2 and 3, Job et al as modified is silent on the plant seed being dried in sufficient light to cause the seed to germinate or the plant seed is dried in a dark place. However, Evans et al teaches that light and darkness have an effect on germination depending on the plant species. Therefore, it would be obvious to one of ordinary skill in the art through a combination of routine laboratory tests and experimentation and knowledge of the seed species, to determine light or dark requirements for a known desired effect and to control germination.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-3 have been considered but are moot in view of the new ground(s) of rejection.

Examiner maintains that applicant's claim limitations are extremely broad and entail steps that are very old and well-known in the art of seed germination. The effects of light and darkness on seed germination have been studied extensively. Applicant's broad claims do not patentably distinguish applicant's method over the teachings of the prior art nor over the knowledge of one of ordinary skill in the art. Furthermore, Smith teaches that beneficial affects of drying after soaking are known.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Germination of Fourwing Slatbush Seed AS Affected by Soaking and Chloride Removal, Twitchell, Moscow, Idaho, University of Idaho, pages 218-220 and U.S. Patent No. 5,294,593.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

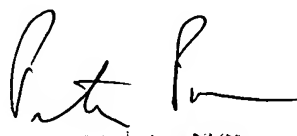
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

Art Unit: 3643

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone numbers for the organization where this application or proceeding is assigned are 703-306-4195 for regular communications and 703-305-0285 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-4357.

AMV  
November 21, 2002

  
PETER M. POON  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 9908